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Department of the Treasury

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-138389-15

Date:

May 16, 2016

Legend

Decedent

Spouse

Trust 1

Trust 2

Bank

Date 1

Date 2

Dear :

This letter responds to your personal representative's letter of November 13, 2015, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a Qualified Domestic Trust (QDOT) election under § 2056A of the Internal Revenue Code (Code).

The facts and representations submitted are as follows:

On Date 1, Decedent died testate, survived by spouse (Spouse) and four children. Spouse is not a citizen of the United States.

Under Article Fourth of his will, Decedent bequeathed the residue of his estate to Trust 1. Spouse is the trustee of Trust 1 and executor of Decedent's estate.

Article 3 of Trust 1 provides, in relevant part, that upon Decedent's death, the trustee is to divide the property in the trust estate into two trusts, a Marital Trust and a

Bypass Trust. The Marital Trust is to consist of the balance of the trust estate not allocated to Bypass Trust.

Article 4 of Trust 1 provides, in relevant part, that the trustee is to pay to Spouse during the lifetime of Spouse in monthly or in other convenient installments, but no less often than annually, all of the net income of the Marital Trust. If the net income of the trust estate is insufficient for Spouse, the trustee is to pay or apply for the benefit of Spouse as much of the principal of the trust estate as the trustee, in the trustee's sole discretion, considers necessary for Spouse's health, education, support, maintenance, comfort, welfare, or happiness to maintain her accustomed manner of living. On her death, Spouse is to have the right to appoint all of the principal and all of the undistributed net income of Marital Trust to any person or entity so designated in her will. Any of the principal and undistributed net income of Marital Trust not appointed at Spouse's death is to be distributed to a trust for the benefit of Decedent's children.

Spouse, in her capacity as executor of Decedent's estate, received an extension of time to file Form 706, United States Estate (and Generation-Skipping) Tax Return until Date 2. Spouse engaged the services of an accountant to prepare the Form 706. On Schedule M of Form 706, the estate claimed a marital deduction for certain property passing outright to Spouse and for the distribution of assets to the residuary Marital Trust. However, the accountant failed to make the election to treat the trust as a QDOT on such form. On Date 2, Spouse timely filed the Form 706.

Spouse has engaged a law firm to prepare a new trust document (Trust 2). Bank, a domestic corporation of the United States, is to be the trustee of Trust 2. Spouse intends to transfer all assets that she received outright as a result of the death of Decedent and the assets of Marital Trust to Trust 2. Trust 2 is intended to qualify as a QDOT.

Article 3 of Trust 2 provides, in relevant part, that all of the income of Trust 2 is to be distributed by the trustee, in monthly or other convenient installments, but not less frequently than quarter-annually, to Spouse as long as Spouse lives. If the income and other assets of Spouse are insufficient for the proper and reasonable support, maintenance, and health of Spouse, the trustee is to distribute or apply for the use and benefit of Spouse all or a portion of the principal of Trust 2. Notwithstanding any other provision of Trust 2, the trustee is not to make any distribution of principal or income from the trust estate to any person other than Spouse, during the life of Spouse. Upon the death of Spouse, the trustee is to distribute any accrued but undistributed income of Trust 2 to whomever Spouse appoints in her will. The remaining principal of Trust 2 is to be distributed to the issue of Spouse, as Spouse appoints in her will. Any of the principal and undistributed net income of Marital Trust not appointed at Spouse's death is to be distributed to trusts for the benefit of Decedent's children.

Article 5.12 of Trust 2 provides, in relevant part, that at least one trustee of Trust 2 is to be a United States citizen or a United States domestic corporation. Any distribution from Trust 2 is subject to the U.S. trustee's right to withhold any federal or state estate taxes which may be imposed on such distribution. The U.S. trustee is to have the power to take any actions reasonably necessary to satisfy all requirements pertaining to QDOTs, as prescribed by the Code.

The estate is requesting an extension of time under §§ 301.9100-1 and 301.9100-3, to make an election under § 2056A(d) to treat Trust 2 as QDOT.

LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Under § 2056(b)(7), a marital deduction is allowed for qualified terminable interest property (QTIP), which is defined under § 2056(b)(7)(B) as property (i) which passes from the decedent, (ii) in which the surviving spouse has a qualifying income interest for life, and (iii) to which the election under § 2056(b)(7)(B)(v) applies. Section 2056(b)(7)(B)(v) provides that the election with respect to any property shall be made by the executor on the return of tax imposed by § 2001.

Section 2506(b)(7)(B)(ii) provides that a surviving spouse has a qualifying income interest for life in property if (i) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, and (ii) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(d)(1)(A) provides that if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). However, § 2056(d)(2)(A) provides that § 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a QDOT.

Under § 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by § 2056A(b)(1) on the distribution; (2) the trust must

meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by § 2056A(b); and (3) the executor must make the election prescribed by § 2056A(d) to treat the trust as QDOT.

Under § 2056A(d) and § 20.2056A-3(a) of the Estate Tax Regulations, the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than one year after the due date of the return.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

A request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, we grant an extension of time of 120 days from the date of this letter to make a QDOT election with respect to Trust 2.

The election should be made on a supplemental Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return filed with the Cincinnati Service Center, at the following address: Internal Revenue Service, Cincinnati Service Center, Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs and Special Industries

By: Leslie H. Finlow
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc :